

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 693 of 2003()

WCC.130/1998 of COMMISSIONER FOR WORKMEN'S COMPENSATION
(DEPUTY LABOUR COMMISSIONER),ERNAKULAM
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APPELLANT/IST OPPOSITE PARTY:

REMANI, W/O.PUSHPANGATHAN,
PUTHAN MADOM, POWER HOUSE JUNCTION,
VYTILA, COCHIN - 19.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS/APPLICANT AND 2ND OPPOSITE PARTY:

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1. N.K.BABU, VADAKKETHARA HOUSE,
POONITHURA P.O. TRIPUNITHURA.
 2. THE ORIENTAL INSURANCE CO.LTD.,
BY ITS REGL.MANAGER, REGD .OFFICE,
MUTHOOT TOWERS, M.G.ROAD, COCHIN 35.
 3. COMMISSIONER FOR WORKMEN'S COMPENSATION,
(DEPUTY LABOUR COMMISSIONER), ERNAKULAM.

R1 BY ADV. SRI.A.ANTONY

SMT.LEELAMMA ANTONY

R2 BY ADV. SRI.M.JACOB MURICKAN

R3 BY GOVERNMENT PLEADER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 3/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.693 of 2003

Dated, this the 3rd day of December, 2007

JUDGMENT

The appellant is the first opposite party in W.C.C.No.130/1998 on the file of Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Ernakulam. First respondent/applicant filed a petition for compensation alleging that he was employed by the appellant as a driver of the vehicle bearing registration No.KL7A 2450 and while he was driving the vehicle he met with an accident and sustained an employment injury. Appellant appeared and filed a written statement contending that there was no employer-employee relationship. It was contended that the accident occurred due to the negligence of the driver himself. It was admitted that the vehicle was driven by the first respondent and he sustained injuries. The insurer filed a written statement contending that the vehicle was insured in the name of one V.G.Thomas and the appellant /first opposite party is one Ramani and since the first opposite party contended that there was no employer-employee relationship the company is not bound to pay compensation. The Deputy Labour Commissioner found that the workman is entitled to get Rs.22,747/- as compensation, but exonerated the insurer and directed the appellant to pay compensation. Challenging that order this appeal is filed.

2. Before the Deputy Labour Commissioner it was contended that the vehicle originally belonged to V.G.Thomas. It was contended that the appellant

purchased the vehicle and the transfer of ownership was noted in the registration certificate. The particulars in the R.C.book show that from 28.1.1996 onwards the appellant is the registered owner of the vehicle. Accident occurred on 14.3.1996. It was contended that the policy was issued to one V.G.Thomas which was valid from 15.6.1995 to 14.6.1996. It was also contended that on account of the provisions contained under Section 157 of the Motor Vehicles Act there was automatic transfer of the policy to the name of the appellant and merely because the policy stood in the name of the previous owner the Deputy Labour Commissioner ought not have exonerated the insurance company. A reading of the impugned order shows that the appellant did not adduce any evidence. She did not even appear and contest the matter. In the impugned order itself it was recorded that the appellant/first opposite party was absent. Before this Court the appellant produced a photocopy of the certificate of registration. She has not produced the same before the Deputy Labour Commissioner. So I am of the view that it is only just and proper that the appellant be given another opportunity to establish that there was a valid transfer of the vehicle in her name and though there is no endorsement regarding the change of ownership in the policy in view of the provisions under Section 157 of the Motor Vehicles Act, the second respondent insurance company is liable to pay the compensation. For that limited purpose the matter has to go back.

In the result, appeal is allowed in part. I make it clear that I am not

interfering with the quantum of compensation awarded as there is no challenge. That part of the order by which the appellant was directed to pay compensation alone is set aside. Case is remanded to the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Ernakulam for considering the liability of the insurer alone. Parties are directed to appear before the Deputy Labour Commissioner on 10.1.2008.

I.A.No.2875/2003 will stand dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**

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